

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

CARGILL, INC.,

Respondent,

and

**INTERNATIONAL CHEMICAL
WORKERS UNION COUNCIL OF
THE UNITED FOOD AND
COMMERCIAL WORKERS
INTERNATIONAL UNION,
LOCAL 867C,**

Charging Party.

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CASE NO. 07-CA-270555

Administrative Law Judge
Robert Giannasi

**CHARGING PARTY’S SUPPLEMENTAL RESPONSE TO RESPONDENT’S MOTION
FOR CONTINUANCE^{1/}**

NOW COMES the Charging Party, International Chemical Workers Union Council of the United Food and Commercial Workers International Union, Local 867C (“Union”), by and through the undersigned counsel, and hereby provides the following response to Respondent’s (Second) Motion for Continuance (“Continuance”).

On April 7, 2021,^{2/} Charging Party filed its Opposition to Respondent’s Motion for Continuance (“Union’s Opposition”) so as to provide a quick response to the Continuance. The reasons set forth in the Union’s Opposition are incorporated herein by reference. Also on April 7, Counsel for the Acting General Counsel filed its Opposition to Respondent’s Motion for Continuance (“AGC’s Opposition”). The Union is in agreement with, and thereby supports, the

^{1/} This is Respondent’s second request for a postponement of the hearing in this matter. On February 22, 2021, Respondent requested its first postponement, to which the Union objected, however, the Regional Director reschedule the hearing to April 19, 2021.

^{2/} All dates herein are 2021 unless stated otherwise.

AGC's Opposition. Since both the Union's Opposition and AGC's Opposition address nearly all arguments the Union has in opposition to Respondent's Continuance, this response will be brief.

Simply put, Respondent's Continuance is premature. Respondent's request to continue the hearing is based on pure speculation and assumptions that are not properly before the ALJ. The ALJ issued an order on April 2 related to the Union's and Counsel for Acting General Counsel's motions in limine ("ALJ Order"). On April 5, Respondent filed a Request for Special Permission to Appeal and Appeal of Administrative Law Judge's Order on Motions in Limine ("Special Permission Appeal"). On April 8, the Union filed its Response to Respondent's Special Permission Appeal. It is anticipated that Counsel for Acting General Counsel will also file a response against Respondent's Special Permission Appeal.

The first hurdle that Respondent must clear is for the Board to even entertain its special permission appeal. If the Board, as the Union argues, denies Respondent's request, then there is absolutely no need to postpone this hearing. Furthermore, even if the Board accepts to hear Respondent's appeal, such action will likely come with directives on whether to grant, or deny, Respondent's request before the Board to postpone this hearing. Even still, if the Board chooses to hear Respondent's appeal that does not necessarily infer that the hearing must be postponed to do so. That is, there is no automatic stay when a party seeks special permission to appeal an ALJ's decision. If there were, the Rules and Regulations would provide for such automatic stay. Therefore, it is premature, and therefore unnecessary, to postpone the hearing in this matter while Respondent's Special Permission Appeal is pending.

It would be unduly burdensome to the Union, and Union's counsel, to grant Respondent's Continuance. First, of the utmost importance is seeking resolution to the time sensitive issue of the pension plan freeze, which affects 71% of the Union's bargaining unit. Respondent's unilateral

modification to the parties' collective bargaining agreement, by freezing the plan one year earlier than agreed to, will have a detrimental effect on those bargaining unit employees contemplating retirement now, and while this litigation is ongoing. Therefore, the earlier the Union can seek resolution, the better it can advise its members on such monumental decisions.

Second, as mentioned in Union's Opposition, the undersigned counsel, who was vehemently opposed to postponing the original March 23 hearing, would be prejudiced. As discussed in Union's Opposition, as lead counsel, I have been the one responsible for this matter and have been preparing for the hearing on April 19. I will be out on maternity leave no later than May 13 (hopefully not earlier, but with twins, it can be unpredictable). A second postponement would interfere with my ability to represent the Union in this matter.

Given the importance of the underlying issue at hand, coupled with lead counsel's upcoming unavailability, it would be unduly burdensome to postpone this hearing for the second time. Therefore, for the reasons stated above, the Union respectfully requests that Respondent's Continuance of the April 19 hearing be denied.

Dated: April 8, 2021.

Respectfully submitted,

/s/ Danielle L. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2021, a copy of the foregoing was filed via the electronic filing system on the NLRB's website and served via e-mail upon Cargill's counsel, Joseph E. Tilson and Jason A. Cabrera, at jtilson@cozen.com and jcabrera@cozen.com; Larry A. Smith, Counsel for the General Counsel at Larry.Smith@nlrb.gov; and, Administrative Law Judge, Robert Giannasi, at Robert.Giannasi@nlrb.gov.

/s/ Danielle L. Murphy
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UFCW Assistant General Counsel

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